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PATENT APPLICATION

ATTORNEY DOCKET NO. __10010610-1__

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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Christian L. Struble

Application No.: 09/894,213

Filing Date: 6-27-01

Title: System and Method for Controlling the Presentation of Advertisements

Confirmation No.: 4820

Examiner: Alvarez, Raquel

Group Art Unit: 3622

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on **1-18-05** .

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

( )	one month	$120.00
( )	two months	$450.00
( )	three months	$1020.00
( )	four months	$1590.00

( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of ___**$500.00**___. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

(X) I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450. Date of Deposit:____**2-7-05**____
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Number of pages:

Typed Name: Mary Meegan

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Rev 12/04 (Aplbrief)

Respectfully submitted,

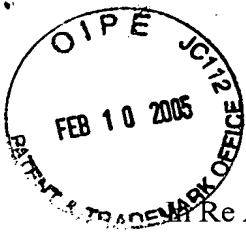**Christian L. Struble**

By _____

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of:

Christian L. Struble

Serial No.: 09/894,213

Filed: June 27, 2001

Group Art Unit: 3622

Examiner: Alvarez, Raquel

Docket No. 10010610-1

For: **System and Method for Controlling the Presentation of Advertisements**

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal Brief under 37 C.F.R. §41.37 is submitted in support of the Notice of Appeal filed January 18, 2005, responding to the Final Office Action mailed September 21, 2004.

It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required therefor are hereby authorized to be charged to Deposit Account No. 08-2025.

I. **Real Party in Interest**

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. **Related Appeals and Interferences**

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

III. **Status of Claims**

Claims 1, 6-9, 16, and 19-30 stand finally rejected. No claims have been allowed. The final rejections of claims 1, 6-9, 16, and 19-30 are appealed.

IV. **Status of Amendments**

This application was originally filed on June 27, 2001, with nineteen (19) claims. In a Response filed July 8, 2004, Applicant amended claims 1, 6, 8, and 16, canceled claims 2-5, 10-15, and 18, and added new claims 20-30. In a Response filed November 4, 2004, Applicant canceled claim 17.

All of the above-identified amendments have been entered and no other amendments have been made to any of claims 1, 6-9, 16, and 19-30. The claims in the attached Claims Appendix (see below) reflect the present state of those claims.

V. Summary of Claimed Subject Matter

The claimed inventions are summarized below with reference numerals and references to the written description ("specification") and drawings. All references are shown in the application at least where indicated herein.

Independent claim 1 describes a method for controlling the presentation of advertisements, the method being practiced by a local computing device (102, Figs. 1 and 3) having a processing device (300, Fig. 3) and a memory (302, Fig. 3). The method of claim 1 comprises receiving local weather condition information from a sensing unit (106, Figs. 1 and 2) that is separate from the computing device. Specification, page 5, line 17 to page 6, line 7; page 11, lines 7-10; Fig. 5, block 500. The method further comprises determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information. Specification, page 8, lines 4-8; page 11, lines 11-22; page 12, line 10 to page 13, line 8; Fig. 5, block 504. Lastly, the method comprises facilitating presentation of appropriate advertisements on a local display unit (104, Figs. 1 and 2). Specification, page 13, line 13 to page 14, line 2; Fig 5, block 508.

Independent claim 16 describes advertisement presentation control software (314, Fig. 3) stored on a computer readable medium (302, Fig. 3) of a local computing device (102, Figs. 1 and 3). The software of claim 16 comprises logic configured to collect local weather condition information from a sensing unit (106, Figs. 1 and 2) that is separate from the local computing device. Specification, page 8, lines 4-8; page 11, lines 7-22; Fig. 3, item 314; Fig. 5, block 500. The software further comprises logic configured to determine which advertisements are appropriate for presentation based upon the collected weather condition information. Specification, page 8, lines 4-8; page 11, lines 11-22; page 12, line 10 to page 13, line 8; Fig. 5,

block 504. Lastly, the software comprises logic configured to transmit appropriate advertisements to a display unit (104, Figs. 1 and 2) that is separate from the local computing device. Specification, page 13, line 13 to page 14, line 2; Fig 5, block 508.

Independent claim 26 describes a method for controlling the presentation of advertisements practiced by a local computing device (102, Figs. 1 and 3) having a processing device (300, Fig. 3) and a memory (302, Fig. 3). The method of claim 26 comprises receiving local weather forecast information with the local computing device that is collected by and transmitted from a remote server (110, Figs. 1 and 4) via a network (108, Fig. 1). Specification, page 6, lines 8-17; page 9, lines 5-9; page 11, lines 7-10; Fig. 5, block 500. The method further comprises determining which advertisements are appropriate for presentation on a local display unit (104, Figs. 1 and 2) using the computing device and based upon the received local weather forecast information. Specification, page 8, lines 4-8; page 11, lines 11-22; page 12, line 10 to page 13, line 8; Fig. 5, block 504. Finally, the method comprises transmitting appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device. Specification, page 13, line 13 to page 14, line 2; Fig 5, block 508.

Independent claim 29 describes advertisement presentation control software (314, Fig. 3) stored on a computer readable medium (302, Fig. 3) of a local computing device (102, Figs. 1 and 3). The software of claim 29 comprises logic configured to receive local weather forecast information that is collected by and transmitted from a remote server (110, Figs. 1 and 4) via a network (108, Fig. 1). Specification, page 6, lines 8-17; page 9, lines 5-9; page 11, lines 7-10; Fig. 5, block 500. The software further comprises logic configured to determine which advertisements are appropriate for presentation on a local display unit (104, Figs. 1 and 2) using the computing

device and based upon the received local weather forecast information. Specification, page 8, lines 4-8; page 11, lines 11-22; page 12, line 10 to page 13, line 8; Fig. 5, block 504. Finally, the software comprises logic configured to transmit appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device. Specification, page 13, line 13 to page 14, line 2; Fig 5, block 508.

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 6-9, 16, and 19-30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Thibadeau, et al. ("Thibadeau," U.S. Pat. No. 5,565,909) in view of Helferich (U.S. Pat. No. 6,636,733). Applicant respectfully requests the Board of Patent Appeals to review that ground of rejection.

VII. Arguments

The Appellant respectfully submits that claims 1, 6-9, 16, and 19-30 are not obvious under 35 U.S.C. § 103(a), and respectfully requests that the Board of Patent Appeals overturn the final rejection of those claims. Applicant discusses the rejection and presents arguments against the rejection in the following.

A. Applicable Law

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5

U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

B.   The <u>Thibadeau</u> Reference

Thibadeau discloses a method of identifying set-top receivers, not advertisement presentation methods and systems as claimed by Applicant. The nature of Thibadeau's disclosure can be understood from Thibadeau's "Summary of the Invention," which provides in part:

> It is an *object of the invention to enable identification of receivers to selectively process generally broadcast data or programming*, by means of encoding arbitrary position information respecting one or both of the content of the generally broadcast information and the area of interest of a user of the receiver. In this context, *a "receiver" is construed to include a variety of tuner-equipped devices such as television receivers, VCRs, cable interface boxes and the like*, whereby a signal is selected.
> Traditional broadcast of digital information has taken two approaches: either direct addressing of a particular recipient or a

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"universal broadcast" to all recipients. Traditionally these are intermixed, where some information is directed and some universally available. When the directed approach is used, and a large amount of identical information must be sent to some, but not all, recipients, the amount of information broadcast is proportional to the number of recipients. In a "universal broadcast", information cannot be restricted from certain recipients, and all recipients must respond to each of the broadcast digital packets to determine if the material contained therein is of interest.

This invention embodies a technique of controlling or filtering information based on the geographic location of the recipient. [Thibadeau, column 3, lines 36-60, emphasis added]

Accordingly, Thibadeau's invention is used to control what information is sent to television signal receivers based upon the geographical location of those receivers. Thibadeau describes the method of providing this control or filtering as follows:

According to a preferred embodiment, a set-top receiver such as a cable interface device or the like includes a processor, or at least a comparator, which is encoded at least with its own geographic location, e.g., via latitude, longitude, and preferably altitude. The receiver is coupled to an input means enabling the location to be changed. This information can be rendered accurate to a few meters. *The position of the receiver, and presumably of the user thereof, is used by the associated digital information processor to determine the relevance of generally broadcast information which it receives. This information preferably includes digital information and may include, for example, offers of commercial services that are location specific, public, or legal notices targeted to a specific area, public safety and emergency information notices, and many other forms of information which the end user may wish to examine.* Similar

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information which applies to locations in which the user is not interested can be ignored by the processor.

To a large extent, position information is applied to a certain area by encoding and/or calculating x and y borderlines in one or more polygons defining an area of interest. *According to the invention, normal spatial coordinates such as latitude and longitude are preferably extended to include altitude. This is of particular interest for concerns such as emergency weather information because flood warnings, icing conditions and rain/snow boundaries are often related to altitude. For example, a flood warning may be of grave importance to a user at a low elevation adjacent to a river or other watercourse, but may be of less importance to someone whose latitude/longitude coordinates are even closer to the watercourse, but whose elevation precludes any danger under the circumstances.* [Thibadeau, column 3, line 61 to column 4, line 24, emphasis added]

It is this last excerpt upon which the Examiner relies in applying the Thibadeau reference against Applicant's claims. Specifically, the Examiner relies, at least in part, upon Thibadeau's mention of "emergency weather information" in arguing that Applicant's claims to controlling advertisements based upon local weather conditions are obvious.

C.   The **Helferich** Reference

Helferich discloses a wireless messaging method. As is described by Helferich (emphasis added):

The present invention generally relates to systems and/or methods for *wireless messaging*. In one embodiment, the present invention provides a method for providing direct message access to a user having a wireless messaging device configured to receive text messages. *The method includes the steps of: receiving a message*

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intended for the user; storing the message; assigning a message identifier to the message, the message identifier including a callback number; and transmitting to the wireless messaging device a message comprising the message identifier. [Helferich, column 1, lines 31-40]

In one embodiment of Helferich's invention, actions within the messaging system may depend upon various conditions that are detected by and transmitted from a mobile telephone to a message processor that controls what messages are forwarded to the mobile telephone. Helferich, column 9, line 66 to column 10, line 5. For example, as is described by Helferich:

Sensors may be added to the mobile phone 10 and data from the sensors may be automatically transmitted or manually sent by the mobile phone user. A temperature sensor, for example, may be included in the mobile phone 10 wherein temperature readings are automatically transmitted to the email server 16. *Based on temperature, the location of the mobile phone 10 and the presence of the mobile phone user, the email server 16 or the message processor may for example send an email message to the mobile phone user that includes an advertisement* stating, "The temperature is 98 degrees. Please drink Coke. 35 cent special one block away at the super store." [Helferich, column 10, lines 5-16, emphasis added]

D.   **Applicant's Claims**

As the following discussions elucidate, Applicant's claims pertain to inventions that are distinct from those described in the Thibadeau and Helferich references. Due to the differences between the inventions described by Thibadeau and Helferich and those claimed by Applicant, the Thibadeau/Helferich combination fails to teach or suggest Applicant's explicit claim limitations. Moreover, given the distinct nature of the Thibadeau and Helferich disclosures, a person having ordinary skill in the art would not

be motivated to combine the teachings of those two references to modify the Thibadeau set-top receiver in the manner suggested by the Examiner. Applicant discusses several of the claims at issue in the following.

1. Claim 1

Applicant's independent claim 1 provides as follows (emphasis added):

> 1. A method for controlling the presentation of advertisements, the method being practiced by a local computing device having a processing device and a memory, the method comprising:
>
> *receiving local weather condition information* from a *sensing unit that is separate from the computing device*;
>
> *determining which advertisements are appropriate for presentation* using the local computing device and *based upon the received weather condition information*; and
>
> facilitating presentation of appropriate advertisements on a local display unit.

As is described in the foregoing, independent claim 1 was rejected as being obvious in view of Thibadeau and Helferich. In supporting the rejection, the Examiner stated the following regarding the Thibadeau reference:

> With respect to claims 1, 6, 9, 16-17, 20-23, 26, 29 Thibadeau teaches a method for controlling the presentation of advertisements, the method being practiced by a local computing device having a processing device and a memory (Abstract). Receiving local weather information from a sensing unit that is separate from the computing device and transmitted from a remote server via a network (col. 4, lines 14-24 and col. 13, lines 13-61). [Office Action of September 21, 2004, page 2, section 3]

Applicant notes as a first matter that, contrary to that alleged in the above excerpt, Thibadeau does not teach a "method for controlling the presentation of advertisements." Indeed, the Examiner even explicitly admitted that Thibadeau does not teach transmission of advertisements on page 3 of the outstanding Office Action. It is because of that shortcoming of the Thibadeau reference that the Examiner combined the Helferich reference with the Thibadeau reference in formulating the rejection of Applicant's claims.

As a second matter, Applicant notes that Applicant is not merely claiming "receiving local weather information." Instead, Applicant recites "receiving local weather condition information from a sensing unit that is separate from the computing device". The Examiner identified no disclosure or suggestion of such a "sensing unit" in the Thibadeau reference.

In further support of the rejection, the Examiner states the following:

> With respect to determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information and presenting the ads on a local display unit. [*sic*] Thibadeau teaches sending flood or tornado warnings on a user terminal based on the weather conditions (col. 4, lines 25-38 and col. 13, lines 22 to col. 14, lines 1-57). Thibadeau does not specifically teach that the messages transmitted are advertisements. Helferich teaches advertisements that are based on the measured weather condition. A weather of 98 degrees will provide an advertisement for Coke) col. 10, lines 10-15*). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have replaced the warnings information with advertisements of Helferich* because such a modification would motivate and would increase

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consumption of certain products based on the weather condition. [Office Action of September 21, 2004, page 2, section 3, emphasis added]

Applicant takes issue with the Examiner's logic reflected in the above excerpt. Although it is true that Thibadeau teaches filtering *"emergency weather information,"* based upon the *location* of the set-top receiver that receives the information, there is simply no basis for the argument that such filtering would render obvious filtering *advertisements* based upon *local weather*. First, it is clear that Thibadeau's reference to "emergency weather information," such as "flood warnings" has nothing to do with advertisements. Instead, Thibadeau's reasoning was, with the form of filtering performed by the set-top receiver described in the Thibadeau reference, only the most relevant *emergency warnings* are presented to the user, not the most relevant advertisements. Second, and perhaps more significant, is that Thibadeau's set-top receiver only filters information based upon the location of the set-top receiver. Indeed, substantially the entirety of the Thibadeau disclosure is focused on the problem of filtering information in relation to the location of the set-top receiver. Moreover, Thibadeau devotes nearly the entire Detailed Description to describing how that location (including the altitude) is determined. Therefore, Thibadeau, at best, teaches filtering weather information based upon location, *not* filtering advertising information based upon the weather.

Because of the clear lack of suggestion for filtering advertisements based upon local weather conditions, the Examiner relies upon the Helferich disclosure. As is described above, Helferich discloses, in one embodiment, controlling which advertisements are sent to a mobile telephone based in part upon a temperature sensed by the telephone. Despite this fact, this would not render obvious filtering advertisements based upon local weather conditions using the Thibadeau system.

As is indicated above, the Examiner suggests "replacing" the warnings information of Thibadeau with the advertisements of Helferich. Such a modification is not supported by the teachings of the prior art. Although Thibadeau's set-top receiver is described as filtering information, including emergency weather information, the art of record provides no suggestion to "replace" information with advertisements.

In addition to replacing the emergency weather information with advertisements, the Examiner is suggesting modification of the Thibadeau set-top receiver to filter advertisements based upon temperature instead of location. Applicant asserts that such a modification is completely unwarranted and improper. In particular, to modify the Thibadeau set-top receiver in that manner would be to obviate the primary functionality of Thibadeau's invention: to filter information according to the location of the set-top receiver. In other words, the suggested modification would contradict the core teachings of Thibadeau's disclosure. That being the case, a person having ordinary skill in the art would not be motivated to disable filtering based upon location and remove all of Thibadeau's technology that was developed to enable such filtering in favor of enabling the set-top receiver to filter advertisements based upon a local weather condition, as is suggested by the Examiner.

As a further point, Applicant asserts that there is clearly no motivation contained in the prior art for the above-described modification of the Thibadeau set-top receiver. To the contrary, the only motivation for such a modification comes from Applicant's own disclosure. As is well established in the law, hindsight to the Applicant's own disclosure is *per se* improper. *See Crown Operations International, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).

In view of at least the foregoing, Applicant respectfully submits that claim 1, and dependent claims 6-9, 20, 21, and 24, are allowable over Thibadeau and Helferich.

2. Claim 7

Dependent claim 7 provides as follows (emphasis added):

> 7. The method of claim 6, wherein *the display unit is mounted to a fuel pump*.

Regarding this claim, Applicant notes that neither Thibadeau nor Helferich says anything about a display unit that is mounted "to a fuel pump". To account for this deficiency of the applied references, the Examiner stated: "Official notice is taken that it is old and well known in gas stations and the like to have advertisements display on a fuel pump in order to induce the customers to make purchases while pumping gas." While it may be true that fuel pump displays may be known, this does *not* change the fact that it was not known to present on a fuel pump display advertisements that are "based upon the received weather condition information". Again, Thibadeau describes a set-top receiver, while Helferich describes a mobile telephone. Applicant submits that the Examiner must present a teaching *from the prior art* to account for the explicit limitation of claim 7.

3. Claim 8

Dependent claim 8 provides as follows (emphasis added):

> 8. The method of claim 1, further comprising determining the current local time using the local computing device and *determining which advertisements are appropriate for presentation based upon the current local time using the local computing device*.

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As is noted above in relation to claim 1, Thibadeau only teaches filtering information according to a location of a set-top receiver. Given this fact, modifying the Thibadeau set-top receiver to filter information, such as advertisements, "based upon the current local time" would contradict the core teachings of the Thibadeau disclosure. As such, the argument that it would have been obvious to modify the Thibadeau disclosure to determine which advertisements are appropriate for presentation based upon the current local time is unwarranted. Claim 8 is believed to be allowable for at least this reason.

4. Claim 9

Dependent claim 9 provides as follows (emphasis added):

> 9. The method of claim 1, wherein *different advertisements are selected for presentation as the weather condition information changes*.

Regarding claim 9, given that there is no support for modifying the Thibadeau set-top receiver for filtering advertisements according to local weather conditions, it is likewise true that there is no support for modifying the Thibadeau set-top receiver such that "different advertisements are selected for presentation as the weather condition information changes". Claim 9 is believed to be allowable for at least this reason.

5. Claim 16

Applicant's independent claim 16 provides as follows (emphasis added):

> 16. Advertisement presentation control software stored on a computer readable medium of a local computing device, comprising:
>
> *logic configured to collect local weather condition information* from a *sensing unit that is separate from the local computing device*;
>
> *logic configured to determine which advertisements are appropriate for presentation based upon the collected weather condition information*; and
>
> logic configured to transmit appropriate advertisements to a display unit that is separate from the local computing device.

Applicant notes that, as is identified above, claim 16 was rejected for the same reasons that claim 1 was rejected. Applicant therefore incorporates the arguments provided above in relation to claim 1 above. Applicant further notes that, in addition to the various method steps or acts recited in claim 1, neither Thibadeau nor Helferich teach or suggest, either alone or in combination, "logic configured to collect local weather condition information from a sensing unit that is separate from the local computing device" or "logic configured to determine which advertisements are appropriate for presentation based upon the collected weather condition information", as are explicitly recited in claim 16. Again, Thibadeau only teaches filtering information based upon the location of a set-top receiver. Therefore, there is no support for modifying the Thibadeau set-top receiver to comprise logic that filters "advertisements" based upon "collected weather condition information".

In view of at least the foregoing, Applicant respectfully submits that claim 16, and dependent claims 19, 22, 23, and 25, are allowable over Thibadeau and Helferich.

6. Claim 19

Dependent claim 19 provides as follows (emphasis added):

19. The software of claim 16, further comprising *logic configured to determine the current local time and logic configured to determine which advertisements are appropriate for presentation based upon the current local time*.

As is noted above in relation to claim 8, it would not have been obvious to modify the Thibadeau set-top receiver to filter information, such as advertisements, "based upon the current local time". Applicant submits that it would likewise not be obvious to provide the set-top receiver with "logic configured to determine the current local time and logic configured to determine which advertisements are appropriate for presentation based upon the current local time", as is recited in claim 19.

7. Claims 21 and 23

Dependent claims 21 and 23 provide as follows (emphasis added):

21. The method of claim 1, *wherein the local weather condition information comprises at least one of barometric pressure, precipitation, brightness, humidity, and wind force*.

23. The system of claim 16, *wherein the local weather condition information comprises at least one of barometric pressure, precipitation, brightness, humidity, and wind force*.

Regarding claims 21 and 23, Applicant notes that nothing in either the Thibadeau or Helferich reference teaches or suggests that the local weather condition information

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on which advertisements are based comprises at least one of "barometric pressure, precipitation, brightness, humidity, and wind force". Although Helferich mentions temperature in one embodiment, Helferich says *nothing* of barometric pressure, precipitation, brightness, humidity, and wind force. Claims 21 and 23 are allowable over the rejection for at least this reason.

8. Claims 24 and 25

Dependent claims 24 and 25 provide as follows (emphasis added):

24. The method of claim 1, wherein determining which advertisements are appropriate for presentation comprises *disqualifying available advertisements with reference to a correlation table*.

25. The system of claim 16, wherein the logic configured to determine which advertisements are appropriate comprises *logic configured to disqualify available advertisements with reference to a correlation table*.

Regarding claims 24 and 25, Applicant notes that nothing in either the Thibadeau or Helferich reference teaches or suggests disqualifying, or logic configured to disqualify, available advertisements, "with reference to a correlation table". Applicant notes that this is an explicit limitation that must be taught or suggested by the prior art. Claims 24 and 25 are allowable over the rejection for at least this reason.

9. Claim 26

Applicant's independent claim 26 provides as follows (emphasis added):

26. A method for controlling the presentation of advertisements practiced by a local computing device having a processing device and a memory, the method comprising:

receiving local weather forecast information with the local computing device that is collected by and transmitted from a remote server via a network;

determining which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information; and

transmitting appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device.

As is described above in relation to claim 1, the applied references do not render obvious receiving local weather condition information from a sensing unit that is separate from the computing device, or determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information. For at least the same reasons as those discussed in relation to claim 1, the references further do not render obvious either of "receiving local weather forecast information with the local computing device that is collected by and transmitted from a remote server via a network" or "determining which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information", as are recited in claim 26

In view of at least the foregoing, Applicant respectfully submits that claim 26, and dependent claims 27 and 28, are allowable over Thibadeau and Helferich.

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10. Claim 27

Dependent claim 27 provides as follows (emphasis added):

> 27. The method of claim 26, wherein *the local display unit is mounted to a fuel pump*.

As is noted above in relation to claim 7 above, the references do not render obvious a display unit that is mounted to a fuel pump. Applicant asserts that claim 27 is allowable for at least the same reasons that claim 7 is allowable.

11. Claim 28

Dependent claim 28 provides as follows (emphasis added):

> 28. The method of claim 26, further comprising determining the current local time using the local computing device and *determining which advertisements are appropriate for presentation based upon the current local time using the local computing device.*

As is noted above in relation to claim 8, the applied references do not render obvious determining which advertisements are appropriate for presentation based upon the current local time using the local computing device. Applicant asserts that claim 28 is allowable for at least the same reasons that claim 8 is allowable.

12. Claim 29

Applicant's independent claim 29 provides as follows (emphasis added):

29. Advertisement presentation control software stored on a computer readable medium of a local computing device, comprising:

logic configured to receive local weather forecast information that is collected by and transmitted from a remote server via a network;

logic configured to determine which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information; and

logic configured to transmit appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device.

As is described above in relation to claim 26, the applied references do not render obvious "receiving local weather forecast information with the local computing device that is collected by and transmitted from a remote server via a network" or "determining which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information". Applicant asserts that the applied references do not render obvious logic configured to receive local weather forecast information that is collected by and transmitted from a remote server via a network" or "logic configured to determine which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information", for at least the same reasons as those described above in relation to claim 26.

In view of at least the foregoing, Applicant respectfully submits that claim 29, and dependent claim 30, are allowable over Thibadeau and Helferich.

13.   Claim 30

Dependent claim 30 provides as follows (emphasis added):

30.   The software of claim 29, further comprising logic configured to determine the current local time and *logic configured to determine which advertisements are appropriate for presentation based upon the current local time using the local computing device.*
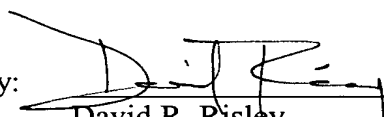
As is noted above in relation to claim 28, the applied references do not render obvious determining which advertisements are appropriate for presentation based upon the current local time using the local computing device. Applicant asserts that claim 30, which recites "logic configured to determine which advertisements are appropriate for presentation based upon the current local time using the local computing device", is allowable for at least the same reasons that claim 28 is allowable.

VII. Conclusion

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,

By: _____

David R. Risley
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Claims Appendix under 37 C.F.R. §41.37(c)(1)(viii)

The following are the claims that are involved in this Appeal.

1.   A method for controlling the presentation of advertisements, the method being practiced by a local computing device having a processing device and a memory, the method comprising:

receiving local weather condition information from a sensing unit that is separate from the computing device;

determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information; and

facilitating presentation of appropriate advertisements on a local display unit.

2-5.   Canceled.

6.   The method of claim 1, wherein facilitating presentation of appropriate advertisements comprises transmitting the appropriate advertisements from the computing device to the local display unit.

7.   The method of claim 6, wherein the display unit is mounted to a fuel pump.

8.   The method of claim 1, further comprising determining the current local time using the local computing device and determining which advertisements are appropriate for presentation based upon the current local time using the local computing device.

9.   The method of claim 1, wherein different advertisements are selected for presentation as the weather condition information changes.

10-15. Canceled.

16.   Advertisement presentation control software stored on a computer readable medium of a local computing device, comprising:

logic configured to collect local weather condition information from a sensing unit that is separate from the local computing device;

logic configured to determine which advertisements are appropriate for presentation based upon the collected weather condition information; and

logic configured to transmit appropriate advertisements to a display unit that is separate from the local computing device.

17-18. Canceled.

19.   The software of claim 16, further comprising logic configured to determine the current local time and logic configured to determine which advertisements are appropriate for presentation based upon the current local time.

20.   The method of claim 1, wherein the local weather condition information comprises at least one of temperature, barometric pressure, precipitation, brightness, humidity, and wind force.

21.   The method of claim 1, wherein the local weather condition information comprises at least one of barometric pressure, precipitation, brightness, humidity, and wind force.

22.   The system of claim 16, wherein the local weather condition information comprises at least one of temperature, barometric pressure, precipitation, brightness, humidity, and wind force.

23.   The system of claim 16, wherein the local weather condition information comprises at least one of barometric pressure, precipitation, brightness, humidity, and wind force.

24.   The method of claim 1, wherein determining which advertisements are appropriate for presentation comprises disqualifying available advertisements with reference to a correlation table.

25.   The system of claim 16, wherein the logic configured to determine which advertisements are appropriate comprises logic configured to disqualify available advertisements with reference to a correlation table.

26.   A method for controlling the presentation of advertisements practiced by a local computing device having a processing device and a memory, the method comprising:

receiving local weather forecast information with the local computing device that is collected by and transmitted from a remote server via a network;

determining which advertisements are appropriate for presentation on a local display unit using the computing device and based upon the received local weather forecast information; and

transmitting appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device.

27.   The method of claim 26, wherein the local display unit is mounted to a fuel pump.

28.   The method of claim 26, further comprising determining the current local time using the local computing device and determining which advertisements are appropriate for presentation based upon the current local time using the local computing device.

29.   Advertisement presentation control software stored on a computer readable medium of a local computing device, comprising:

logic configured to receive local weather forecast information that is collected by and transmitted from a remote server via a network;

logic configured to determine which advertisements are appropriate for

presentation on a local display unit using the computing device and based upon the received local weather forecast information; and

logic configured to transmit appropriate advertisements from the local computing device to the local display unit, the local display unit being separate from the local computing device.

30. The software of claim 29, further comprising logic configured to determine the current local time and logic configured to determine which advertisements are appropriate for presentation based upon the current local time using the local computing device.

<u>Evidence Appendix under 37 C.F.R. §41.37(c)(1)(ix)</u>

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix under 37 C.F.R. §41.37(c)(1)(x)

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.